

SENATE BILL 2705

By Southerland

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 34 and Title 62, Chapter 5, Part 4, relative to arrangements for future funeral services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 62-5-406, is amended by deleting subsection (d) in its entirety and by redesignating the subsequent subsection accordingly.

SECTION 2. Tennessee Code Annotated, Section 62-5-408(a), is amended by deleting the following language:

In no event shall the principal be diminished.

SECTION 3. Tennessee Code Annotated, Section 62-5-408, is amended by adding the following language as a new subsection (b) and by redesignating the subsequent sections accordingly:

(b) A pre-need funeral trust fund established by a pre-need seller for the benefit of a guaranteed, irrevocable pre-need funeral contract shall:

(1) Be irrevocable and require under its terms that the pre-need seller deposit any monies and insurance policies used to fund the contract into the trust;

(2) Designate the pre-need seller as the recipient of the trust funds;

(3) Be maintained in the name of the pre-need seller and serve as a depository for all monies and insurance policies used to fund the irrevocable contract sold by the pre-need seller;

(5) Remit to the pre-need seller an amount equal to the pre-need seller's original retail price as set forth in the contract upon delivery of services or merchandise; and

(6) Notwithstanding the provisions of Section 62-5-410(b) to the contrary, remit to the pre-need seller the remaining amount in the trust at the time of delivery of all services or merchandise subject to the contract if such amount is greater than the pre-need seller's total current retail price of all services and merchandise subject to the contract; provided, however, that no pre-need seller shall qualify as a beneficiary of the remaining amount of an insurance death benefit.

SECTION 4. Tennessee Code Annotated, Title 62, Chapter 5, Part 4, is amended by adding the following language as a new, appropriately designated section:

Section 62-5-4__.

(a) There is hereby established within the state treasury a consumer restitution fund, hereinafter the "pre-need restitution account". All funds received by the commissioner pursuant to SECTION 5 shall be deposited into the account and held solely for the purpose of this section. Monies within the account shall be used to:

(1) Provide restitution to any pre-need funeral contract purchaser for pecuniary loss arising from a pre-need funeral contract entered into with a pre-need seller that is in receivership pursuant to Section 62-5-414 if the remaining funds held pursuant to such contract are insufficient to fulfill the financial obligation imposed by the contract. If the pre-need funeral contract purchaser is deceased, then the pre-need contract beneficiary, or the beneficiary's estate, shall instead be eligible for restitution; and

(2) Provide for the costs of administering the account.

(b) The amount of restitution provided to a pre-need funeral contract purchaser shall not exceed the gross amount of the original pre-need funeral contract plus interest. The account shall not be charged with court costs or the payment of legal or other fees.

In computing the amount of restitution, the commissioner shall give credit for merchandise delivered and any resources remaining available to the purchaser. The payment of restitution from the account is not a right, and a purchaser does not have a vested right in the account as a beneficiary of the account.

(c) Whenever restitution is paid out of the account, the state of Tennessee may institute an action against the responsible pre-need seller for the recovery of the whole or any specified part of the restitution in the circuit courts of the state of Tennessee in any county, in a state, or in a federal court of any other state or district in which such pre-need seller resides.

(d) Amounts remaining in the account at the end of each fiscal year shall not revert to the general fund. Money in the account shall be invested by the state treasurer pursuant to title 9, chapter 4, part 6 for the sole benefit of the account. All earnings attributable to such investments shall be credited to the account.

(e) The status of the account shall be annually reviewed by the commissioner. If the commissioner determines during its annual review that the account balance equals or exceeds two million five hundred thousand dollars (\$2,500,000), the commissioner shall suspend payments to the account until such time as the commissioner determines that the account balance is less than two million five hundred thousand dollars (\$2,500,000).

SECTION 5. Tennessee Code Annotated, Title 62, Chapter 5, Part 4, is amended by adding the following language as a new, appropriately designated section:

Section 62-5-4__.

Any pre-need seller who establishes a trust under Section 62-5-408(b) may choose to receive an administrative fee no less than forty-eight (48) hours after the contract becomes irrevocable. The amount of such fee may not exceed ten percent

(10%) of the seller's total contract price. If the pre-need seller chooses to receive the fee, then the pre-need seller shall submit a percentage of the fee to the department to be deposited in the pre-need restitution account established in SECTION 4. The commissioner shall establish the percentage to be deposited and the procedures for implementing and enforcing this section pursuant to the provisions of Section 62-5-413.

SECTION 6. The provisions of this act shall apply only to pre-need funeral contracts executed subsequent to the effective date of this act. This act shall take effect upon becoming a law, the public welfare requiring it.